

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF MISSOURI  
EASTERN DIVISION

HOFFMAN BROTHERS HEATING,	)	
and AIR CONDITIONING, INC.,	)	
	)	
Plaintiff,	)	
	)	
vs.	)	Case No. 4:19 CV 200 RWS
	)	
HOFFMAN AIR CONDITIONING	)	
& HEATING, LLC., et al.,	)	
	)	
Defendants.	)	

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THOMAS HOFFMAN, et al.,	)	
	)	
Plaintiffs,	)	
	)	
vs.	)	Case No. 4:19 CV 206 RWS
	)	
HOFFMAN BROS. HEATING AND	)	
AIR CONDITIONING, INC.,	)	
	)	
Defendant.	)	

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**MEMORANDUM AND ORDER OF CONSOLIDATION**

This matter is before me on the joint motion to consolidate this case with *Thomas E. Hoffmann, et al., v. Hoffmann Bros. Heating and Air Conditioning, Inc.*, Case Number 4: 19 CV 206 RWS. For good cause shown, the motion will be granted. In accordance with the Local Rules, “following consolidation, all

documents shall be filed only in the lowest-numbered case, unless otherwise ordered by the Court.” Local Rule 42-4.03.<sup>1</sup>

**IT IS HEREBY ORDERED** that the joint motion to consolidate [37] is granted and this case is consolidated with *Thomas E. Hoffmann, et al., v. Hoffmann Bros. Heating and Air Conditioning, Inc.*, Case Number 4: 19 CV 206 RWS, for all purposes, the higher number case shall be administratively closed, and from this date forward, all submissions shall be filed only in this case and shall bear only this caption.

**IT IS FURTHER ORDERED** that within ten (10) days of the date of this Order, plaintiff shall file an operative amended complaint which sets forth all claims against defendants, whether originally filed in this or the consolidated case.


**IT IS FURTHER ORDERED** that within twenty (20) days of the date of this Order, defendants shall file an operative amended answer which sets forth all defenses and counterclaims against plaintiff, whether originally filed in this or the consolidated case.

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<sup>1</sup> In their joint motion, the parties disagree about which case should be designated as the “lead case” and who should be considered the plaintiff. Although the parties make reference to the “first filed rule,” there is no motion to dismiss on this basis pending before the Court in either this or the higher filed case. Given that the parties have each asserted claims against the other, it appears to make little difference which case is designated the so-called “lead case” and who is called “the plaintiff.” This is not an MDL, and the parties have demonstrated no reason for the Court to deviate from the Court’s Local Rules in this case.

**IT IS FURTHER ORDERED** that the motion to dismiss [26] pending in *Thomas E. Hoffmann, et al., v. Hoffmann Bros. Heating and Air Conditioning, Inc.*, Case Number 4: 19 CV 206 RWS, is denied without prejudice as it is not directed at the operative pleadings, and may be refiled if appropriate once the operative pleadings are filed.

**IT IS FURTHER ORDERED** that the motion for leave to file second amended complaint [41] in *Thomas E. Hoffmann, et al., v. Hoffmann Bros. Heating and Air Conditioning, Inc.*, Case Number 4: 19 CV 206 RWS, is denied without prejudice as moot given the Court's ruling that defendants are granted leave to file an operative amended answer.

  
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RODNEY W. SIPPEL  
UNITED STATES DISTRICT JUDGE

Dated this 20th day of May, 2019.